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CV5-107.wpd

FILED
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U.S. DISTRICT COURT
★ JUN 19 2005 ★

UNITED STATES DISTRICT COURT PM. _____
EASTERN DISTRICT OF NEW YORK TIME AM. _____

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OMAR ALONSO HERRERA,
A 73 135 282

Petitioner,

- against -

JOHN ASHCROFT,

Respondent.

ORDER

Civil Action
No. CV-03-4695

(Ross, J.)

- - - - - X

WHEREAS, Petitioner Omar Alonso Herrera filed, on or about September 12, 2003, a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, that challenges the lawfulness of his removal order, to wit: the Board of Immigration Appeals' ("BIA") decision, dated October 5, 1988, dismissing his appeal from the immigration judge's decision ordering him removed;

WHEREAS, section 106(c) of the REAL ID Act of 2005 ("RIDA"), Pub. L. No. 109-13, Div. B, 119 Stat. 231 (May 11, 2005), provides that a pending case brought pursuant to 28 U.S.C. § 2241 that challenges a final administrative order of removal shall be transferred to the court of appeals for the circuit in which a petition for review could have been properly filed pursuant to section 242 of the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1252, as amended by RIDA § 106;

WHEREAS, pursuant to INA § 242(b)(2), 8 U.S.C. § 1252(b)(2), the appropriate judicial circuit is the one in which the immigration judge completed proceedings, and the Petitioner's proceedings were completed in New York, New York;

IT IS HEREBY ORDERED as follows:

(1) This case is hereby transferred in its entirety, pursuant to § 106(c) of RIDA, to the United States Court of Appeals for the Second Circuit;

(2) The Petitioner's removal from the United States is stayed pending further order from the Court of Appeals;

(3) Nothing in this order shall be construed as limiting any defenses, including jurisdictional defenses, available to the Government.

SO ORDERED:

Dated: Brooklyn, New York
June 14, 2005


HONORABLE ALLYNE ROSS
United States District Judge